

RECEIVED
FEDERAL ELECTION
COMMISSION
BEFORE THE
FEDERAL ELECTION COMMISSION

Daniel Levin

Jersey City, NJ 07306
Complainant,

OFFICE OF GENERAL
COUNSEL

v.

MUR # 7090

Coalition for Progress
Ana Rivas, Treasurer
231 Tenth Avenue Apt. 7B
New York, NY 1011

America Leads
Timothy Koch, Treasurer
P.O. Box 25944
Alexandria, VA 22313

Respondent.

COMPLAINT

This complaint is filed under 52 U.S.C. § 30109(a)(1) against Coalition for Progress and Ana Rivas in her capacity as Treasurer, and against America Leads and Timothy Koch in his capacity as Treasurer for multiple violations of the Federal Election Campaign Act (the "Act") and Federal Election Commission (the "FEC") regulations.

Coalition for Progress and America Leads violated 52 U.S.C. § 30122 by accepting \$1,000,000 and \$250,000, respectively, from shell corporations that were established for the sole purpose of allowing the actual donors of the funds to evade disclosure. Moreover, even after the FEC issued a clear warning that contributions like these are illegal, the Super PACs stubbornly refused to refund the contributions within the prescribed 30-day period. This failure to cure the violation within 30 days runs afoul of 11 C.F.R. § 103.3(b). We urge the Commission to investigate these violations and sanction the Super PACs to the fullest extent permitted by law.

A. FACTUAL BACKGROUND

On December 23, 2015, an entity by the name DE First Holdings filed as a statutory trust in Delaware. It listed the Delaware Trust Corporation as its registered agent; no natural persons were listed as being affiliated or associated with the entity. According to its filing with the FEC, Coalition for Progress received a \$1,000,000 contribution from DE First Holdings the next day, December 24, 2015. In the one day period between its formation and the contribution, DE First Holdings engaged in no known business activities; it did not file for any business licenses; and it did not set up

any website or social media presence to promote the business to the general public.

Accordingly, there is no genuine question that another person (whose identity is currently unknown) provided the funds to DE First Holdings with the understanding that they would, in turn, be contributed to Coalition for Progress. Notwithstanding this, Coalition for Progress disclosed the \$1,000,000 contribution on its FEC report as coming from this shell entity, DE First Holdings, rather than the actual source of the funds. Nor did Coalition for Progress disclose the beneficial owner or trustee of the statutory trust on its FEC report.

On January 12, 2016, an entity by the name of Decor Services LLC filed as a limited liability company in Delaware. It listed the Corporation Service Company as its registered agent; no natural persons were listed as being affiliated or associated with the entity. According to its filing with the FEC, America Leads received a \$250,000 contribution from Decor Services LLC on January 28, 2016. In the sixteen day period between its formation and the contribution, DE First Holdings engaged in no known business activities; it did not file for any business licenses; and it did not set up any website or social media presence to promote the business to the general public.

Accordingly, there is no genuine question that another person (whose identity is currently unknown) provided the funds to DE First Holdings with the understanding that they would, in turn, be contributed to Coalition for Progress. Notwithstanding this, America Leads disclosed the \$250,000 contribution on its FEC report as coming from this shell entity, Decor Services LLC, rather than the actual source of the funds.

B. LEGAL DISCUSSION

1. Contribution in the name of another

Federal law provides that "[n]o person shall make a contribution in the name of another person or knowingly permit his name to be used to effect such a contribution."¹ And "no person shall knowingly accept a contribution made by one person in the name of another person."² FEC regulations provide that an illegal contribution in the name of another is made when a person "[g]iv[es] money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing" the true contributor.³

On April 1, 2016, the FEC issued guidance making clear that the practice of setting up shell entities to shield the true source of political contributions is an illegal contribution in the name of another. Three of the six FEC commissioners voted to find reason to believe that donors and PACs that engaged in the practice during the 2012 election cycle had violated federal law.⁴ The other three commissioners chose not to

¹ 52 U.S.C. § 30122

² *Id.*

³ 11 C.F.R. § 110.4(b)(2)(i).

⁴ FEC Matters Under Review 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Commissioners Walther, Ravel, and Weintraub (April 1, 2016).

proceed with enforcement against these particular respondents, citing the fact that the donors had publicly identified themselves after the initial outcry against the practice.⁵

These three commissioners made clear, however, that the underlying practice is illegal. Writing separately, they affirmed that it is illegal for a donor to "intentionally funnel[]" funds to a Super PAC "through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements."⁶ These commissioners set forth a clear legal standard to govern these circumstances:

Consistent with this command, we conclude that, when enforcing section 30122 in similar future matters, the proper focus will be on whether funds were intentionally funneled through a closely held corporation or corporate LLC for the purpose of making a contribution that evades the Act's reporting requirements. If they were, then the true source of the funds is the person who funneled them through the corporate entity for this purpose. Where direct evidence of this purpose is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions. These facts would suggest the corporate entity is a straw donor and not the true source of the contribution.⁷

Under this standard, Respondents plainly accepted illegal contributions in the name of another. Given the close proximity in time between the establishment of DE First Holdings and Decor Services LLC and the receipt of the contributions by Respondents and the lack of any known business activities by either entity, there is no factual dispute that the corporate entities lacked income from assets, investment earnings, business revenues, or bona fide capital investments to finance the contributions. Nor is there any question that these entities were created and operated for the sole purpose of making political contributions. Accordingly, Respondents accepted an illegal contribution in the name of another in violation of 52 U.S.C. § 30122.

2. Failure to refund illegal contribution within 30 days

On May 2, 2016, Complainant notified Respondents by letter that these contributions were illegal under the standard set forth by the FEC on April 1, 2016. Complainants informed Respondents of their obligations under 11 C.F.R. § 103.3(b)(2):

If the treasurer in exercising his or her responsibilities under 11 CFR 103.3(b) determined that at the time a contribution was received and deposited, it did not appear to be ... made in the name of another, but later discovers that it is illegal based on new evidence not available to the political committee at the time of

⁵ FEC Matters Under Review 6485, 6487, 6488, 6711, and 6930, Statement of Reasons of Commissioners Petersen, Hunter, and Goodman (April 1, 2016).

⁶ *Id.* at 2.

⁷ *Id.* at 12.

receipt and deposit, the treasurer shall refund the contribution to the contributor within thirty days of the date on which the illegality is discovered.

Assuming, *arguendo*, that Respondents were unaware of the appropriate legal standard that governed these contributions at the time they were made, the Commission clarified that standard on April 1, 2016 and Respondents made them aware of it no later than May 2, 2016. Accordingly, Respondents became aware of the illegality of the contributions no later than May 2, 2016 and, pursuant to section 103.3(b)(2), had until June 1, 2016 to refund the contributions and disclose the true donor on their FEC reports. And, in fact, Coalition for Progress is well aware of this requirement, as it indicated on its most recent FEC filing that it was undertaking such a review with respect to another contribution from an LLC.

Yet there is no evidence that Respondents have done so. The Respondents have made no public statements, and filed no public reports, indicating that the funds have been refunded. Nor have the Respondents made any public filings disclosing the true identity of the donor. This inaction is even more appalling in the case of Coalition for Progress, which has publicly invoked the 30-day review period with regard to at least one unrelated contribution. Respondents' failure to refund the contributions constitutes a knowing and willful violation of the Act.

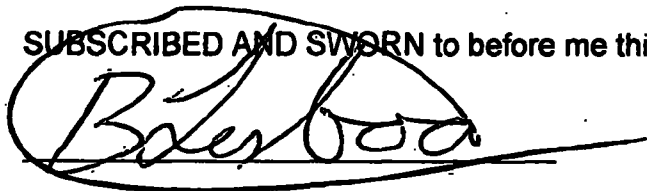
C. REQUESTED ACTION

As we have shown, Respondents violated the Act by accepting illegal contributions in the name of another. Their violation became knowing and willful when they failed to refund the illegal contributions within 30 days of becoming aware of their illegality. We respectfully request that the Commission investigate this violation; sanction Respondents the maximum amount permitted by law; and, if a knowing and willful violation is found, refer the matter to the U.S. Department of Justice.

Sincerely,



SUBSCRIBED AND SWORN to before me this 13 day of June, 2016



Notary Public

My Commission Expires:

